

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
R&S Media)	Facility ID No. 87812
)	
For Application to Modify the)	
Construction Permit of Station KBNH(FM),)	File No. BMPH-20000229ABO
Homedale, Idaho)	
)	
For Application for License to Cover Construction)	File No. BLH-20031229ABR
Permit)	
)	
For Request for Program Test Authority)	

**MEMORANDUM OPINION AND ORDER
AND ORDER TO SHOW CAUSE**

Adopted: April 13, 2004

Released: April 13, 2004

By the Chief, Media Bureau:

1. The Media Bureau ("Bureau") has before it (1) the captioned application of R&S Media ("RSM") to modify the facilities of new unbuilt commercial FM station KBNH(FM), at Homedale, Idaho; and (2) the May 4, 2001, petition for reconsideration ("Petition") of the staff's grant of that application submitted by Citicasters Co. ("Citicasters"), licensee of KCIX(FM), Garden City, Idaho.¹ The Bureau also has before it RSM's application for license to cover that construction permit and its concomitant request for program test authority ("PTA"), each filed on December 29, 2003. For the reasons set forth below, we grant Citicasters' petition for reconsideration to the limited extent discussed below, rescind the grant of the KBNH(FM) construction permit application, and dismiss without prejudice RSM's license application and PTA request.

2. **Background.** RSM was granted a construction permit on March 23, 1999, to build new station KBNH(FM) at Homedale, Idaho.² On February 29, 2000, RSM filed the captioned modification application to change its transmitter site (the "Application"), requesting a waiver of the prohibited contour overlap requirements of Section 73.215(a) and the minimum separation requirements of Section 73.215(e)

¹ On December 29, 2003, RSM filed both a license application (File No. BLH-20031229ABR) to cover the construction permit and a request for program test authority to commence operation with these facilities. We will dismiss these filings, without prejudice, in view of the process begun here.

² File No. BPH-19970804MC.

of the Commission's rules.³ The Application was unopposed, and on March 30, 2001, the staff waived Sections 73.215 (a) and (e) and granted the Application.⁴ On May 4, 2001, Citicasters filed its Petition.⁵

3. Procedural Matters. As indicated above, Citicasters did not oppose the Application. Consequently, Citicasters now requests standing under the provisions of Section 1.106 (b)(1)⁶ to seek reconsideration as an entity "whose interests are adversely affected" and had "good reason" for not participating earlier in the proceeding.⁷ Citicasters also asserts that KBNH(FM)'s waiver request is substantively deficient and that grant of the waiver was erroneous, even under the precedent cited by the Bureau. Citicasters also maintains that the Bureau lacked the delegated authority to waive Sections 73.215(a) and (e). Finally, in its reply, Citicasters states that by granting the Application, the Commission has subjected KCIX(FM) to interference when it is entitled to protection by the Commission's rules. This, Citicasters submits, is a modification of KCIX(FM)'s license. Accordingly, by not notifying KCIX(FM) of the Application's filing and affording KCIX(FM) the right to protest, Citicasters contends that the Bureau's grant of the Application violated Section 316 of the Communications Act.

4. Discussion. Standing/Timeliness of Petition. Citicasters asserts that it is adversely affected because the Bureau action waiving Sections 73.215(a) and (e) "allows KBNH(FM) to cause prohibited contour overlap to KCIX(FM)," and that the "good reason" for Citicasters not participating earlier in the proceeding was that Citicasters was not aware of the technical specifics of the Application.⁸ In this regard, Citicasters states that neither RSM nor the Bureau served Citicasters with a copy of the Application or the decision granting the Application, and that the public notices announcing the Application's acceptance and grant did not indicate that the Application included requests to waive Sections 73.215(a) and (e).

5. Although we find that Citicasters may be adversely affected by the staff's waiver of the overlap requirements of 73.215(a),⁹ we conclude that Citicasters has not shown "good reason" for not filing its objection earlier in the proceeding. First, neither RSM nor the Bureau was required to serve Citicasters

³ 47 C.F.R. § 73.207 requires that KBNH(FM) and second-adjacent channel Class C station KCIX(FM), Garden City, Idaho must be separated by at least 105 km. However, as a Section 73.215 proposal, the minimum spacing is 99 km. The separation proposed by KBNH(FM) was 90.9 km from KCIX(FM), therefore a waiver was required.

⁴ Letter to Mr. Robert Thompson, Esq., (MMB, Mar. 30, 2001) ("Staff Decision").

⁵ An Opposition and Reply were filed on May 30 and June 11, 2001, respectively.

⁶ 47 C.F.R. § 1.106(b)(1).

⁷ 47 C.F.R. § 1.106 (b)(1) states in pertinent part that:

... any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken. If the petition is filed by a person who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding.

⁸ Citicasters cites *Pacific Gas and Electric Company*, 14 FCC Rcd 13400 (1999) ("*Pacific Gas*").

⁹ Cf. *The Moody Bible Institute of Chicago, Inc.*, 66 F.C.C.2d 629 (1977) (claim of interference to facility confers status as "party aggrieved or whose interests are affected").

with a copy of the Application. Our broadcast application processing rules did not require such service in this proceeding and Citicasters has not presented any precedent to indicate otherwise.¹⁰ The public notice announcing that the Application had been accepted for filing was published on March 29, 2000;¹¹ therefore, Citicasters had constructive notice of its filing.¹² Further, the public notice specified that the Application was for a minor modification of construction permit, and specified the station's call letters, community of license and frequency. Hence, the public notice provided sufficient information to alert Citicasters that the Application could potentially impact service by adjacent-channel KCIX(FM), which operates in the same service area as KBNH(FM).¹³

6. The staff granted the Application on March 30, 2001, twelve months after the release of the public notice of acceptance.¹⁴ With the exercise of reasonable diligence, Citicasters had more than sufficient time to examine the Application and file an objection, which it failed to do.¹⁵ Citicasters' assertion that it was not aware¹⁶ that RSM had requested a waiver of Sections 73.215 (a) and (e) is not "good reason" to justify the untimely filing of its petition.¹⁷ Nevertheless, we believe that, due to the nature of the issue involved in this proceeding, consideration of Citicasters' arguments is in the public interest.¹⁸

¹⁰ See *First Century Broadcasting, Inc.*, 100 F.C.C.2d 761 (1985) (An applicant does not have a duty to serve a copy of its application on others).

¹¹ See *Broadcast Applications*, Report No. 24701, rel. Mar. 29, 2000.

¹² See *Selma Television, Inc.(WSLA-TV)*, 29 F.C.C.2d 522 (1971); see also *Harold S. Schwartz*, 2 FCC Rcd 5524 (1987); *Forus FM Broadcasting of New York, Inc.*, 7 FCC Rcd 7880 (1992); *Rivoli Realty Co.*, 27 F.C.C.2d 1004 (1971).

¹³ Cf. *Winstar Wireless, Inc.*, 14 FCC Rcd 20533 (1999) (the Commission has wide latitude regarding the information included in a public notice, provided that the notice gives "fair warning" of the scope of the described action). Also, we note that Citicasters' reliance on *Pacific Gas*, see Note 8, *supra*, is misplaced. In that case, the Wireless Telecommunications Bureau ("WTB") released no public notice of the proposal. While it was not required to do so under the Commission's rules, the WTB believed that considering the ostensibly untimely petition would serve the public interest. In the instant case, public notice was published, as prescribed by the rules. The *Winstar* case is thus distinguishable and not persuasive authority on the facts presented here.

¹⁴ Cf. *Press Broadcasting Company*, 3 FCC Rcd 6640 (1988)(even if there is a legitimate reason for not timely filing an objection, waiting two and one half months to file an objection "is difficult to consider prompt"). In this case, Citicasters had 12 months to file an informal objection prior to the grant.

¹⁵ Cf. *Clovis Broadcasters*, 61 F.C.C.2d 362 (1976) (absent compelling circumstances, a 30-day period between public notice and the grant of an application is sufficient time, with reasonable diligence, to review the application); see also *State of Oregon*, 11 FCC Rcd 1843 (1996); *Oro Spanish Broadcasting*, 5 FCC Rcd 5500 (1990); *Shenandoah Communications, Inc.*, 51 F.C.C.2d 378 (1975) and *Quixote Broadcasting Co., Inc.*, 32 F.C.C. 2d 740 (1971).

¹⁶ We note that RSM's opposition includes an affidavit from Leopoldo Ramos ("Ramos"), a principal of RSM, in which he declares he communicated with principals and the ownership of KCIX(FM) during the period December 1, 1999, to January 25, 2000, prior to the filing of the subject application, concerning the proposed short spacing to KCIX(FM). Ramos states that, in his effort to enter into a negotiated short-spacing agreement with the KCIX(FM) principals, he advised them of the nature and extent of the short spacing and interference, the areas and populations affected, and RMS's intention to file the instant waiver request. Ramos states counsel for KCIX(FM)'s owner informally agreed not to oppose the subject application. KCIX(FM) denies making any agreement with Ramos.

¹⁷ See *Citicasters Licenses, Inc.*, 17 FCC Rcd 1997 (2002) and *KOLA, Inc.*, 11 FCC Rcd 14,297 (1996).

¹⁸ 47 C.F.R. § 1.106(c)(2).

7. **Substantive Matters.** *Section 73.215(e) waiver.* With respect to RSM's request for waiver of Section 73.215(e), Citicasters maintains that, contrary to RSM's threshold showing, fully-spaced sites are available. Citicasters states that it has identified five suitable, privately owned sites that are fully-spaced to KCIX(FM) that would provide the requisite principal community coverage to Homedale.¹⁹

8. In *Greater Media Radio Company, Inc.*,²⁰ the Commission stated that the threshold and public interest criteria formerly used to analyze Section 73.207 waiver requests are applicable to requests for waiver of the minimum spacing requirements contained in Section 73.215(e).²¹ The staff determined that RSM had met the threshold criteria for waiving our spacing rules by demonstrating the unavailability of both its initially proposed site and any suitable fully-spaced sites; and by demonstrating that the site proposed in the Application is the least short-spaced available. In addition, RSM demonstrated that grant of the short-spacing waiver would be in the public interest.

9. Concerning the waiver of Section 73.215(e), the staff found that RSM had shown that the Bureau of Land Management ("BLM") had jurisdiction over the initially proposed site and that BLM had concluded that the site was unavailable for tower construction. RSM conducted an intensive search for a non- or lesser-short-spaced transmitter sites. This search included investigation of the few remaining non-BLM parcels of land in the fully-spaced areas. We found that RSM had demonstrated that such locations would require a tower structure in excess of 1000 feet to overcome terrain obstructions and achieve line-of-sight to Homedale. However, RSM stated that BLM indicated that it would oppose the construction of any tower in excess of 200 feet on private land adjacent to BLM land, and we found that BLM's position "effectively prevented KBNH from servicing Homedale with a 70 dBμ signal from these more remote sites to the west of Homedale." We held that RSM had demonstrated that the proposed site was the only possible site acceptable to BLM that would provide line-of-sight to Homedale.

10. We find unpersuasive Citicasters' assertion that non-short-spaced sites are available. First, RSM, collaborating with BLM officials, spent more than six months evaluating various sites, both private and BLM-controlled, seeking to locate a site that was both acceptable to BLM and compliant with the spacing rules. RSM supplemented its waiver request on December 4, 2000, detailing BLM-controlled land, private lands, and other potentially available sites.²² The result of RSM's exhaustive search was the site proposed in the Application, a site which it determined was available and the least-short-spaced. Moreover, it appears that the sites identified by Citicasters are unsuitable. They are mountain top sites located in an inaccessible rugged wilderness area devoid of adequate roads and electrical power.²³ We

¹⁹ In support of these contentions, Citicasters relies on contour studies that use an alternate signal propagation methodology, which it claims is expressly authorized by 47 C.F.R. § 73.313(e).

²⁰ *Greater Media Radio Company, Inc.*, 15 FCC Rcd. 7090 (1999), *petition for reconsideration dismissed*, 15 FCC Rcd 20485 (2000).

²¹ The Commission cited *John Lamar Hill*, 70 F.C.C.2d 153, 44 RR 2d 431 (1971) (present site no longer suitable), *Townsend Broadcasting Corp.*, 62 F.C.C.2d 511, 38 RR 2d 880 (1976) (non-short-spaced sites are unavailable and site selected is the least short-spaced site); *Megamedia*, 67 F.C.C.2d 1527 (1978) (non-short-spaced sites are unavailable and site selected is the least short-spaced site).

²² See RSM's December 4, 2000, "Further Supplement to 'Request for Waiver.'"

²³ See *St. Maries, Idaho and Spokane, Washington, et al.*, 14 FCC Rcd 17012 (MMB 1999) (the suitability of a site relates to a site's feasibility, which includes availability of electrical power and road access); *Topsail Beach and Wilmington, North Carolina*, 3 FCC Rcd 159 (MMB 1988), *recon. granted*, 3 FCC Rcd 3129 (MMB 1988) (it is unfair to require a station to undertake extreme measures, in terms of difficulty and expense, to locate a transmitter (continued...))

therefore reject Citicasters' proffer of fully spaced sites from which, it claims, KBNH(FM) could provide a principal community contour to Homedale, and we affirm the grant of RSM's request for waiver of Section 73.215(e).

11. *Section 73.215(a) waiver.* Next, Citicasters asserts that the factors RSM presented in support of its waiver request are inaccurate.²⁴ In granting the waiver, we acknowledged that no power reduction or directional antenna could completely eliminate the prohibited overlap caused to KCIX(FM), because the transmitter site proposed by RSM lies within KCIX(FM)'s 60 dBu contour.²⁵ Based on RSM's showing, however, we concluded that this was a unique situation and granted RSM's request for waiver of Section 73.215(a).²⁶

12. In its petition for reconsideration, Citicasters challenges RSM's calculations and asserts that RSM presents "inaccurately low figures" relating to the populations and areas subject to prohibited contour overlap and the size and population of the white area.²⁷ Citicasters submits that the amount of contour overlap is "significantly greater" than represented by RSM and that the number of persons who would receive a first aural service from the KBNH(FM) proposal is substantially fewer than specified in the Application.²⁸

(...continued from previous page)

at an unfeasible site in order to meet a site restriction); *Cuban-American Limited*, 2 FCC Rcd 3264 (Rev. Bd. 1987), *sub. history omitted* (circumstances that are extremely hazardous, expensive or disruptive can render a transmitter site unsuitable despite evidence of technical feasibility).

²⁴ RSM indicated that it had investigated the use of a directional antenna in an effort to reduce or eliminate the prohibited contour overlap received by KBNH(FM) from KCIX(FM), but that its calculations showed this would have the minimal effect of reducing the population that would potentially receive interference to KCIX(FM) from 9 persons to 1 person, and would diminish coverage of "white" and "gray" service areas. ("White area" is an area over which no station currently provides fulltime coverage within its protected service contour, and "gray" area, where the inhabitants are within the protected service contour of only one station.) Also, as discussed above in the context of the 73.215(e) waiver request, RSM showed that no other transmitter sites were available at which prohibited contour overlap with KCIX-FM could be completely avoided.

²⁵ Prohibited contour overlap that causes interference within the KCIX-FM 60 dBu service contour would occur even were KBNH to downgrade.

²⁶ The staff also found that, in addition to covering a large white area, the KBNH(FM) proposal would provide a first local service to Homedale, provide service to approximately 345,000 persons within its 60 dBu contour, and support BLM's efforts to protect the environmentally sensitive Owyhee Reservoir Basin.

²⁷ Citicasters indicates that RSM submitted its figures not based on the contour-overlap methodology, but instead using the undesired-to-desired "contour ratio" methodology; Citicasters claims that this methodology has never been employed in Section 73.215 short-spacing cases. Based on the "correct application of the contour overlap method used in Section 73.215 short-spacing cases," writes Citicasters, KBNH(FM) will cause overlap of 315 square kilometers including 90 persons within the KCIX(FM) 1 mV/m contour, and KBNH(FM) will receive overlap of 142 square kilometers containing 7,023 persons within its 1 mV/m contour. Petition for Reconsideration, Engineering Statement, at 11.

Additionally, Citicasters argues that RSM "presents an inaccurate picture of the size and population of the white area to which grant of the KBNH(FM) application will provide the first aural service. Citicasters claims that KBNH(FM) will provide a first aural service to only 145 persons in a 3,439-square-kilometer area, which represents only 0.04 percent of the population within the KBNH(FM) 1 mV/M contour. Petition for Reconsideration, Engineering Statement, at 11-12.

²⁸ Citicasters' states that operation of KBNH(FM) from one of the fully spaced sites would provide greater white area service than that proposed in the subject application.

13. We have reviewed Citicasters' technical exhibit and find that the staff made no error in its decision to grant the KBNH(FM) waiver request and Application. As noted above, there is no available and suitable site from which prohibited contour overlap with KCIX-FM could be completely avoided. Also as noted above, the use of a directional antenna or power reduction would not avoid the creation of new predicted overlap with KCIX(FM). This was a significant factor in considering RSM's waiver request.²⁹ Additionally, a reduction in KBNH(FM)'s power toward KCIX(FM) by use of a directional antenna would have minimal effect on the area and population that would receive prohibited overlap from KCIX(FM), but it would substantially diminish coverage of the white and gray areas that would receive service from KBNH(FM)'s 100-kW operation.³⁰

14. Citicasters' engineering exhibit does not demonstrate an error of fact or law in the Staff Decision granting the KBNH(FM) Section 73.215(a) waiver request and Application sufficient to warrant reconsideration of that action. RSM's exhibits clearly indicate that it undertook an initial analysis of overlap impact with respect KCIX(FM) under Section 73.215 using the standard prediction methodology in Section 73.313 of the Commission's rule. It also augmented that analysis, as is often done by applicants presenting unique waiver requests, with supplementary data using the desired-to-undesired signal contour ratio to support its request. The differences between the areas and populations in the overlap and white areas derived from the standard methodology and those determined by use of the contour ratio method are neither unexpected nor so great as to alter the public interest calculus under which the staff evaluated and approved the KBNH(FM) Application.

15. *Delegated authority.* Citicasters also maintains that the staff lacked delegated authority under former Sections 0.283(a)(10) and (a)(14)(ii) to waive Section 73.215.³¹ In this regard, Citicasters maintains that the 14.1-km (8.76-mile) short spacing permitted by the waiver is substantial, and because it cannot identify a Commission decision waiving 73.215 (a) or (e), this "novel question" should be referred to the full Commission.

16. The Application presents a close question as to whether the staff was required under the former delegation rules to refer the contour overlap and short-spacing waivers proposed by RSM to the Commission *en banc*. Current Section 0.283, however, no longer requires referral of short-spacing waivers to the full Commission. Rather, it requires referral of matters involving "novel questions." That

²⁹See *Greater Media*, 13 FCC Rcd at 7099, ¶ 18.

³⁰ The staff acknowledged that the population within the white/gray areas was not great, but it emphasized that "the areas themselves are extensive." Staff Decision, at 4. Citicasters has not shown that conclusion to be erroneous.

³¹ Former 47 C.F.R. § 0.283(a)(10)(2001) provided in pertinent part that:

Proposals for new or modified FM facilities that would create substantial new prohibited overlap or station separation shortages...shall be referred to the Commission.

Former section 0.283(a)(14)(ii)(2001) provided in pertinent part that:

Any application or request presenting novel questions of fact, law or policy which cannot be resolved under outstanding precedents or guidelines shall be referred to the Commission.

The rule has since been revised to reflect the Commission's reorganization and expand the authority delegated to the Chief, Media Bureau. The language requiring referral to the Commission any "novel questions of fact, law, of policy which cannot be resolved under existing precedents and guidelines" was retained and is now found in 47 C.F.R. § 0.283(c).

is not the case here. *Greater Media* provides controlling Commission-level precedent for the Bureau to follow. Accordingly, the Bureau may appropriately render the decision on reconsideration.

17. In its decision, the staff also noted that RSM's showing was similar to that made in *Beasley Broadcasting of Philadelphia (WXTU)*,³² in which a Philadelphia station was granted a 12.2-km (7.6-mile) spacing waiver with respect to Section 73.207 to overcome patently defective coverage in its community of license. In *Beasley*, as in the instant case, the applicant undertook a thorough search for a non-short-spaced or lesser-short-spaced transmitter site, and also provided radial data showing line-of-sight problems in locating an acceptable transmitter site. The staff also relied on *Megamedia*, in which the Commission granted a 12.9-km (8-mile) short-spacing after an exhaustive search for a site to remedy excessive radiofrequency emissions. Therefore, RSM's 14.1-km (8.76-mile) waiver request, when compared to comparable spacing waiver decisions, is not novel, and ample Commission precedent existed to support the staff action here.

18. Similarly, *Greater Media* also discusses Section 73.215(a) waiver standards. Citing the Commission's *Reconsideration Order* in the rule making proceeding adopting Section 73.215, the Commission acknowledged in *Greater Media* that waiver is appropriate in "a small number of cases" where, for example, the antenna could not be directionalized to avoid creation of contour overlap and waiver would serve the public interest by allowing retention of existing service to an underserved area.³³ The staff determined that KBNH(FM) could not avoid the creation of new contour overlap with WCIX(FM) by use of a directional antenna and that grant of the KBNH(FM) proposal would provide new service to a large "white" or "gray" area. Additionally, the staff observed that it had in the past granted waivers of other rules where new service would be provided to large white areas.³⁴ Thus, the waiver grant on the facts presented is not novel or unprecedented.

19. *Section 316 of the Communications Act*.³⁵ In its reply,³⁶ Citicasters asserts that by granting the Application and subjecting KCIX(FM) to interference, from which it is otherwise entitled to protection under the Commission's rules, it was error to modify KCIX(FM)'s license without invoking the "protest" provisions of Section 316 of the Communications Act of 1934, as amended (the "Act").³⁷

³² *Beasley Broadcasting of Philadelphia (WXTU)*, 100 F.C.C.2d 106 (1985).

³³ *Greater Media*, 15 FCC Rcd at 7095, 7098, citing *In the Matter of Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, 6 FCC Rcd 5356, 5360 n. 27 (1991).

³⁴ In determining that grant of the subject application/waiver would be in the public interest, the staff found that approximately one-third of the area within KBNH(FM)'s proposed 60 dBμ contour consisted of "white area," over which no station currently provides fulltime coverage, and that a significant additional portion of KBNH(FM)'s proposed 60 dBμ service area consists of "gray" area, where the inhabitants are within the protected service contour of only one other station. The proposed 60 dBμ contour also would encompass portions of U.S. Highways 20 and 26 that presently receive no radio service. While the populations of these "white" and "gray" areas are only 864 persons and 208 persons respectively, the areas themselves are extensive and, outside of Alaska, rare.

³⁵ 47 U.S.C. § 316.

³⁶ 47 C.F.R. § 1.45(c) prohibits petitioners from raising new matters in reply pleadings. We will waive that provision here due to the importance of the statutory issue raised.

³⁷ 47 U.S.C. § 316 (a)(1), in pertinent part, provides that:

Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity. . . . No such order of modification shall

(continued...)

20. Accordingly, we will rescind the grant of the Application and retain it and the petition for reconsideration in pending status; in light of that action, we will also dismiss without prejudice RSM's pending license application and PTA request. This *Order* will constitute the requisite notice to Citicasters under Section 316 of the Act, and we will accord Citicasters 30 days from the release date of this document to show cause why the modification application should not be granted.³⁸ Under Section 316(c) of the Act,³⁹ a protest to a license modification is subject to the requirements of Section 309 of the Act for petitions to deny, *viz.*, the affected station must demonstrate a substantial and material question of fact to obtain a hearing under Section 316(a)(2).⁴⁰ Accordingly, within 30 days of the release of this *Order*, Citicasters SHALL SHOW CAUSE why its license should not be modified by grant of the subject KNBH(FM) Application. The Citicasters submission must be filed in paper form in triplicate with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.⁴¹ If Citicasters files no such statement, we will deem it to have waived its right to protest the modification and to have consented to the modification of its license by the KNBH(FM) modification application.⁴²

21. **Conclusion/Actions.** For the reasons set forth above, IT IS ORDERED, that the Citicasters petition for reconsideration IS GRANTED TO THE EXTENT INDICATED HEREIN and IS DENIED IN ALL OTHER RESPECTS. IT IS FURTHER ORDERED that grant of the modification application for station KNBH(FM), Homedale, Idaho (File No. BMPH-20000229ABO) IS RESCINDED and the Application IS RETURNED TO PENDING STATUS. IT IS FURTHER ORDERED, that the application of R&S Media for license to cover (File No. BLH-20031229ABR) and its request for program test authority ARE DISMISSED WITHOUT PREJUDICE. We will send a copy of this *Memorandum Opinion and Order and Order to Show Cause* by Certified Mail – Return Receipt Requested to:

Marissa G. Repp, Esq.
Hogan & Hartson, L.L.P.
555 13th Street, N.W.
Washington, DC 20004-1109

Robert Lewis Thompson, Esq.

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become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefore, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification.

This provision applies to both “direct” and, as here, “indirect” modification of station licenses. *Western Broadcasting Company v. FCC*, 674 F.2d 44, 49 (D.C. Cir. 1982).

³⁸ See 47 C.F.R. § 1.87(a).

³⁹ 47 U.S.C. § 316(c).

⁴⁰ See *Paul and Nancy Schumacher*, 3 FCC Rcd 7148 n.1 (MMB 1988). These requirements include that the allegations in the petition must be supported by an affidavit of person with actual knowledge of the facts contained. *Pacific Gas and Electric Company*, 17 FCC Rcd 20900, 20906 (2002).

⁴¹ Courtesy copies also may be served on Jerome Robinson, Michael Wagner, and Peter Doyle of the Audio Division, Media Bureau.

⁴² See, e.g., *Pacific Gas and Electric Company*, 17 FCC Rcd 98, 101-102 (W.T. Bur. 2001).

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FEDERAL COMMUNICATIONS COMMISSION

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